

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF WEST VIRGINIA

3 THE CITY OF HUNTINGTON,)

4 Plaintiff,)

5 vs.)

6 AMERISOURCEBERGEN DRUG
CORPORATION, et al.,)

7 Defendants.)

) Civil Action

) No. 3:17-01362

) Hon. David A. Faber

8
9 CABELL COUNTY COMMISSION,)

10 Plaintiff,)

11 vs.)

12 AMERISOURCEBERGEN DRUG
CORPORATION, et al.,)

13 Defendants.)

) Civil Action

) No. 3:17-01665

) Hon. David A. Faber

14 TUESDAY, SEPTEMBER 15, 2020

15 HIGHLY CONFIDENTIAL — SUBJECT TO FURTHER
16 CONFIDENTIALITY REVIEW

17 — — —

18 Remote videotaped deposition of
19 John J. MacDonald, III, held at the location of
the witness commencing at 9:02 a.m. Eastern
20 Time, on the above date, before Carrie A.
Campbell, Registered Diplomat Reporter and
Certified Realtime Reporter.

21
22 Exhibit 4

23 — — —

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1 reasonable way to interpret how that
2 data would have been used, and Keller
3 does nothing to present such a
4 description.

5 MR. JANUSH: Move to strike all
6 parts of that answer after the
7 sentence, "I'm aware that it's a data
8 point that certain distributors may or
9 may not have used at points in time,
10 and I don't know to what extent
11 Cardinal looked at that, period."

12 QUESTIONS BY MR. JANUSH:

13 Q. All right. Moving to my next
14 question.

15 You've embraced the use of
16 IQVIA Xponent data because it, quote,
17 "provides a reasonably reliable measure of
18 the legitimate demand for opioids on an
19 aggregate basis, quote."

20 Is that right?

21 A. That's a statement made in my
22 report, and, yes, I -- I embrace IQVIA as a
23 well-peer-reviewed data set that's highly
24 relied upon by many players touching the
25 pharmaceutical industry.

1 It is not a perfect data set,
2 but it's a strong data set.

3 Q. And when we turn to page 35 of
4 your report, it's at paragraph 76 that I'm
5 focusing on. And here you are addressing
6 that "the IQVIA Xponent data is a national
7 data set that estimates controlled substance
8 prescriptions written by physicians and
9 filled at retail pharmacies."

10 Did I read just that first
11 sentence correctly?

12 A. You did.

13 Q. And later, just for purposes of
14 brevity, you address that the -- at the end
15 that "the IQVIA Xponent data provides a
16 reasonably reliable measure of the legitimate
17 demand for opioids on an aggregate basis."

18 Did I read the last sentence
19 correctly?

20 A. You did with the --

21 Q. And that's what I referenced --
22 oh, sorry.

23 A. I would also highlight the "as
24 such" because --

25 Q. The "as such." Yeah, I'm not

1 working the highlighter, so forgive me.

2 A. No problem.

3 Q. But, Chris, you're doing great.

4 So is IQVIA Xponent -- well,
5 let me take a step back.

6 Can you describe what IQVIA
7 Xponent prescriber-level data is?

8 A. IQVIA, which is a company
9 formerly known as IMS, is a data aggregator.
10 They have negotiated data feeds from a large
11 majority of the nation's pharmacies where
12 actual prescriptions filled at those
13 pharmacies are fed into the IQVIA data set.

14 IQVIA then looks to use
15 extrapolation to estimate what percentage of
16 pharmacies are not reporting into the system
17 and to fill those gaps -- I'll go back to my
18 prior term -- with informed guesswork, a
19 reasoned approach to estimate what is
20 missing.

21 So that's -- that's the
22 primary -- I mean, IQVIA does lots of things.
23 They have consulting services and other
24 things, but their primary reason for existing
25 is a data-er and repackager of pharmaceutical

1 data. A data aggregator and repackager of
2 pharmaceutical data.

3 Q. Do you know of a better source
4 than IQVIA Xponent data to track the
5 prescribing trends and evaluate the level of
6 controlled substances prescribed over time?

7 MR. BUSHUR: Objection. Form.

8 THE WITNESS: There are other
9 data aggregators, so I'm not sure I'm
10 prepared to say -- you know, to apply
11 a subjective evaluation of which one
12 is the best. IQVIA is the largest and
13 best known.

14 QUESTIONS BY MR. JANUSH:

15 Q. And reliable enough that you
16 utilized it for your report; is that right?

17 MR. BUSHUR: Objection. Form.

18 THE WITNESS: For purposes of
19 measuring the legitimate demand, kind
20 of the aggregate level, pharmacy fill
21 information at the aggregate level, I
22 would agree that it is -- it is very
23 reliable.

24 QUESTIONS BY MR. JANUSH:

25 Q. And incidentally, the data that

1 you reviewed, the IQVIA Xponent data, is the
2 data -- {audio interruption}

3 A. Evan, you're cutting out.

4 Q. -- that was produced by
5 defendant Allergan in this litigation; is
6 that right?

7 A. You cut out there.

8 Were you asking -- I'm sorry,
9 repeat the question?

10 Q. Sure.

11 The data, the IQVIA Xponent
12 data, that you reviewed as part of your
13 expert report is the data that was produced
14 by Allergan; is that right?

15 A. That is my understanding. I
16 have reviewed IQVIA data multiple times in
17 the past. It's often provided by
18 pharmaceutical companies in relation to
19 information we use. It's highly expensive,
20 and pharmaceutical companies often purchase
21 subsets of the data.

22 It is my understanding -- to be
23 perfectly honest, I don't recall that it
24 was -- it's the data that was produced in
25 this litigation. I don't recall by whom it

1 was produced.

2 Q. Got it. Okay.

3 So you don't know whether or
4 not defendant Allergan went to IQVIA and
5 contracted to repopulate the data for an
6 almost 20-year period and produce it in the
7 context of this litigation.

8 You don't know one way or the
9 other; is that right?

10 MR. BUSHUR: Objection. Form.

11 THE WITNESS: I do not know one
12 way or the other.

13 Members of my team know that.

14 It's not a fact I'm personally aware
15 of.

16 QUESTIONS BY MR. JANUSH:

17 Q. And to your knowledge, did
18 anything prevent Cardinal from purchasing the
19 formerly known IMS, now IQVIA, Xponent data
20 and from obtaining an understanding of the
21 prescribing history of the highest
22 prescribers?

23 MR. BUSHUR: Objection. Form.

24 THE WITNESS: Other than a lack
25 of requirement to do so and that it

1 was an exceedingly expensive data set,
2 I'm not aware of any other
3 restrictions or hurdles to the
4 purchase of that data. Not to say
5 they didn't exist at the time, but
6 nothing that I'm aware of.

7 QUESTIONS BY MR. JANUSH:

8 Q. What do your words "exceedingly
9 expensive" mean?

10 A. Hundreds of thousands and often
11 millions of dollars.

12 Q. So I want to break this down a
13 bit.

14 Is it your testimony that --
15 well, when does it cost millions of dollars?
16 Are you talking about over a period of many
17 years, or are you talking about one year?

18 I'm trying to get a time frame
19 and a pricing and understand that when you
20 use words like "it's exceedingly expensive,"
21 what that actually means.

22 MR. BUSHUR: Objection. Form.

23 THE WITNESS: Well, a fair
24 question.

25 Relative to other data sets you

1 can obtain -- not necessarily
2 pharmaceutical data sets, but you can
3 obtain CMS data for a few thousands of
4 dollars. Massive data sets for a few
5 thousands of dollars.

6 Data aggregators, their revenue
7 model is aggregate data, package it,
8 turn it around and sell it back out to
9 users.

10 We have approached and, on
11 occasion, have made the purchase of
12 narrow subsections of IQVIA data. And
13 in narrow subsections, it has been
14 hundreds of thousands to achieve --
15 and that's for a single user. That's
16 a relatively small user like BRG is.

17 My understanding is that when
18 pharmaceutical manufacturers want to
19 purchase large swaths of IQVIA data,
20 that it runs into the millions.

21 QUESTIONS BY MR. JANUSH:

22 Q. And --

23 A. So when I use the term
24 "exceedingly expensive," that's, I admit, a
25 subjective term. I'm putting that in

1 relation to other very large data sets that
2 are available by research institutes, the
3 federal government, states, et cetera.

4 Q. So interestingly, you know,
5 I've heard just the opposite in terms of
6 other large companies that present
7 information and can actually share and
8 benefit a data provider like an IQVIA that
9 get volume discounts by being in a position
10 to not only be a stream of revenue into the
11 long term, but that they have the ability to
12 share data as well.

13 So it's your testimony that if
14 you're a large company and you're constantly
15 a subscriber, it can run into the millions of
16 dollars to purchase this data?

17 MR. BUSHUR: Objection. Form.

18 THE WITNESS: I didn't say what
19 the precise pricing would have been
20 for any particular large customer. I
21 don't know that answer.

22 I have made the statement that
23 IQVIA charges a premium price for
24 their aggregated data.

25 Yes, I'm aware that if you are